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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

NO. 627

F. J. UTLEY AND D. T. UTLEY,
PETITIONERS (APPELLANTS),

vs.

CITY OF ST. PETERSBURG, FLORIDA

PETITION OF THE APPELLANTS FOR A REHEARING

LLOYD D. MARTIN,
Counsel for Petitioners.

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PETITION FOR REHEARING

Come now the above named petitioners, F. J. Utley and D. T. Utley, and present this their petition for a rehearing in the above entitled cause, and in support thereof respectfully show:

That your honors in opinion rendered herein April 2, 1934, in paragraph 3 used the following language: "They (meaning appellants) urge the objection also that the levy of a general tax to make up the deficiency in the fund for the payment of the bonds is invalid under the Fourteenth Amendment because the bonds were issued without notice

to the Tax Payers. But notice was unnecessary. The argument to the contrary goes counter to so many decisions that it must be condemned as unsubstantial."

We respectfully submit appellants did not contend that notice to the general taxpayers was necessary before the bonds were issued; that in using the language above quoted your honors inadvertently misunderstood and failed to consider appellants contention as general taxpayers, which was and is disclosed, we respectfully submit by the record to be as follows to-wit:

Appellants as general taxpayers were denied and forbidden by the express terms of said Chapter 9914, Section 6 (R34) from ever pursuing any remedy of any sort, at any time at all, even after the lien for general taxes had attached to their property, before any tribunal whatsoever either administrative or judicial (R8 and 9). See also paragraph at bottom of page 21 of appellants brief. It appears from Section 13 (R38) and Section 15 (R39) that the administrative and judicial remedies mentioned respectively therein, apply only to the special assessment and were not and could not be available to appellants as general Tax Payers, who ultimately were made liable for the payment of the deficiency on the bonds. It further appears that the advalorem tax was levied Aug. 11, 1930 (R7) and that thereafter appellants on April 6, 1931, filed their amended and supplemental bill (R1) to raise this additional question as general Tax Payers.

In rendering the opinion herein it escaped your honors attention, that there was no legislative finding or determination of benefit and that the identical language used in the ordering in resolution (R20) and in the assessment resolution (R22) has been judicially construed by the Supreme

Court of Florida in another case, Utley vs. City of St. Petersburg, 144 so. 53, as not amounting to a legislative finding or determination of benefits. (Appellant's brief, page 26) and contention that this was a denial of due process under the Fourteenth Amendment, and a fatal defect which appellants could not be estopped to set up.

We submit that your honors in opinion herein lost sight of or misunderstood the two foreging contentions of appellants raised by the record as above set forth, and that but for this inadvertance your honors would have reached a different result in your opinion herein, and would have held that the Federal question was genuine and adequate, and that the non Federal question of laches and estoppel was unsubstantial and inapplicable.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the decree of the Florida Supreme Court be upon further consideration reversed.

Respectfully submitted,

LLOYD D. MARTIN,
Counsel for Petitioners.

I, Lloyd D. Martin, Counsel for the above named Petitioners, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

LLOYD D. MARTIN,
Counsel for Petitioners.